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IN THE

Supreme Court of the United States

No. 524

GLADYS JORDAN,

Petitioner,

—v.—

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA AND THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, LOUISIANA

SAM J. D'AMICO
Reymond Building
Baton Rouge, Louisiana

OSSIE B. BROWN
218 St. Louis Street
Baton Rouge, Louisiana

Attorneys for Petitioner

Franklin Press, Inc. Baton Rouge, La.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the matter of State of Louisiana v. Gladys Jordan, No. 47,339, on the docket of said Court on June 30, 1964, denying petitioner's application for writs to that Court, and to review the proceedings of the Nineteenth Judicial District Court for the Parish of East Baton Rouge in the matter entitled "State of Louisiana v. Gladys Jordan," No. 47,339, on the criminal docket of said Court, which proceedings resulted in a finding by the Court that petitioner was guilty of the crime of attempted prostitution.

Citations to Opinions Below

The opinions below are not reported. The Nineteenth Judicial District Court for the Parish of East Baton Rouge filed a series of per curiam opinions ruling upon the petitioner's bills of exception which were dated June 4, 1964 (R 49-58), and are printed in the appendix hereto.

The Supreme Court of Louisiana entered an order denying the application for writs of certiorari, mandamus and prohibition (R II), which is unreported, but is set forth in the appendix hereto.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered on June 30, 1964 (R II). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), petitioner claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Whether petitioner was denied due process and equal protection of the law under the Fourteenth Amendment by the actions of investigating officers in ensnaring or entrapping her to commit the alleged crime; whether petitioner was denied equal protection under the law by the ruling of the Court allowing evidence consisting of rumors concerning her prior reputation for the purpose of showing her predisposition to commit the alleged crime; and, whether petitioner was denied due process and equal protection of the law because of the refusal of the trial court to compel the District Attorney to divulge the name of an informer.

Statutory and Constitutional Provisions Involved

(1) This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(2) This case also involves Louisiana Revised Statutes 14:82 and 14:27, which provide as follows:

Section 82. Prostitution

"Prostitution is the practice by a female of indiscriminate sexual intercourse with males for compensation.

"Whoever commits the crime of prostitution shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both."

Section 27. Attempt

"Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

"Mere preparation to commit a crime shall not be sufficient to constitute an attempt; but lying in wait with a dangerous weapon with the intent to commit a crime, or searching for the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended.

"An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.

"Whoever attempts to commit any crime shall be punished as follows:

"(1) If the offense so attempted is punishable by death or life imprisonment he shall be imprisoned at hard labor for not more than twenty years;

"(2) If the offense so attempted is theft or receiving stolen things, he shall be fined not more than two hundred dollars, or imprisoned for not more than one year, or both;

"(3) In all other cases he shall be fined or imprisoned, or both, in the same manner as for the offense attempted; but such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment prescribed for the offense so attempted, or both."

Statement

Petitioner, Gladys Jordan, seeks a review of her conviction of the crime of attempted prostitution in the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge. Petitioner was charged in that Court by an information (R 24) filed on October 2, 1963, and amended on November 15, 1963, in case Number 47,784 which alleged that on or about the 17th day of July, 1963, she "unlawfully attempted to commit prostitution by the practice of indiscriminate sexual intercourse with males for compensation."

Petitioner was arraigned, and she entered a plea of not guilty on October 3, 1963 (R 35). On November 26, 1963, the trial was commenced (R 42). The trial on this case was completed on that date to the Court, without a jury, and upon the completion of the trial the Court announced that it would withhold its ruling, and allow the defendant to remain on bond until the case was decided (R 42).

On December 3, 1963, the Court found the defendant guilty as charged (R 43). A motion for new trial (R 32), was overruled on May 19, 1964 (R 45), and the Court thereupon sentenced the accused to be confined in the parish jail for three (3) months and to pay a fine of Fifty and No/100 Dollars ($50.00) and costs, and in default of payment of the fine, to be confined in the parish jail for an additional three (3) months (R 45). This was the maximum sentence which could be imposed under Louisiana law. The Court stayed the execution of the sentence for a period of ten (10) days for the purpose of permitting counsel to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition (R 45). Thereafter, on May 29, 1964, the stay of execution was extended for an additional ten (10) days to allow mover additional time within which to file her application for writs of certiorari, mandamus and prohibition in the Supreme Court of the State of Louisiana (R 44, 48).

On June 4, 1964, the trial court filed a series of per curiams to petitioner's bills of exception (R 49-59). Thereafter, on June 5, 1964, petitioner filed her application with the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition seeking to invoke the Supreme Court's supervisory powers (R 1). The writs were denied on June 30, 1964, in an order by the Supreme Court of Louisiana stating (R II):

> "The application is denied. There appears no error in the rulings complained of."

On July 3, 1964, the Supreme Court of the State of Louisiana entered an order staying execution of the decree for a period of ninety (90) days so that petitioner might apply for a writ of certiorari to the United States Supreme Court (R 241-245).

The events leading to petitioner's arrest were as follows:

Deputy Sheriff Pat Bonanno testified (R 65 et seq.) that he was originally placed in contact with the defendant through a telephone call made by a third party, or informant (whose name was never divulged on the trial of the case, despite counsel's request). This occurred on or about July 15, 1963 (R 65, 66). At that time the deputy, using an assumed identity, made a tentative arrangement to meet with the defendant on July 17, 1963, at approximately 7:00 o'clock P.M. The deputy stated that the arrangement was tentative as the accused stated that when he got into the immediate area of her house, he was to telephone her again, and she would then make specific arrangements to meet him or to let him come over. At approximately 7:00 o'clock P.M. on July 17, 1963, Deputy Bonanno, accompanied by Deputy Crais, attempted to call the accused again from a point near her home, but received no answer (R 68). He continued trying to reach her, and was successful in reaching her by telephone at about 8:30 o'clock P.M. This call was made from a point more distant from her home, and he again went to the vicinity of her home, and called her again (R 68). The final arrangements were made at that time, and the Deputy was told to wait in the general area, and she would come by in her car, which she described, and that he was to follow her to her home (R 71).

Approximately ten or fifteen minutes later the accused came by and Deputy Bonanno and Deputy Crais followed her to her residence. After entering the accused's home, the accused partially disrobed, and approximately four or five minutes later, Deputy Bonanno presented her with a marked Twenty Dollar bill (R 72). The deputy had also made a record of the serial numbers of this bill. The bill had been previously marked by Deputy Bonanno's superior, Lt. Sliman (R 73).

The prearranged plan was that fifteen minutes was to be allowed to talk to the accused, following which time other officers, Lieutenant Sliman and Deputy Wall, would make their entrance and the arrest (R 73). During this interval of fifteen minutes the parties talked and drank intoxicating beverages (R 86), and the accused performed a dance (R 91).

Deputy Crais substantially corroborated Deputy Bonanno's testimony (R 126 et seq.). He further testified that at the time the other officers came to the door and knocked the accused went to the telephone and placed a call; then put on her clothes, and the door was then opened (R 169).

Officer Sliman testified (R 172 et seq.) that he in the company of Deputy Wall followed behind Deputy Bonanno and Deputy Crais, and that they waited down the street about twelve minutes after the other officers entered the house; that the defendant, when they knocked, came to the door and opened it. He thereupon told her that he was a Deputy Sheriff; that she was under arrest for attempted prostitution, and that he had a search warrant to search her residence.

All of the prosecution witnesses testified concerning rumors about the character and predisposition of the defendant to commit the crime, even though her character was never placed at issue by the defendant's attorneys.

Deputy Bonanno testified as follows (R 77):

"Q. When had you first heard that she was a prostitute?

"A. It would be hard to say, Mr. Pitcher, as far as the time element.

"Q. Well, how long ago, just recently or some years ago?

"A. Well, the only thing that I might add here is that it had been rumored.

"Q. I understand that, but when did you first hear the rumors?

"A. The time element, let's say approximately a year ago."

Deputy Crais testified as follows:

"Q. Did you have any information she was available for the purposes you were discussing?

"A. No, sir, but I had heard it, there had been rumors of it.

"Q. You had heard rumors?

"A. Yes, sir, just rumors, not facts."

Deputy Sliman testified as follows (R 178):

"I have heard Gladys Jordan discussed on many occasions in the last several years to the effect that she was a prostitute."

However, Mr. Sliman further testified that he had been in the Sheriff's office for about three (3) years; that prior to that he was an investigator in the District Attorney's office for eight (8) years; that prior to that he was a detective in the City Police Department for two (2) years, but that during this entire thirteen (13) years this was the first time he had participated in any arrest of this defendant (R 178-180).

Mr. Ron Crouch, another prosecution witness, testified as follows (R 198):

"Q. Have you heard rumors that she was a prostitute?

"A. Yes I had."

How the Federal Questions Were Presented

The Federal questions sought to be reviewed here were raised in the trial court by an objection to the admissibility of the evidence (R 68). We quote the objection as follows:

> "May It Please the Court at this time we on behalf of the defendant wish to object to any further testimony along this line and particularly as it relates to the alleged offense herein for the reason that this witness had informed the Court that he was present when a phone call was made by another person and in which arrangements were made or contact was made to this person to agree to an event which was to be used as a basis for prosecution and at this time we object to any testimony upon this particular prosecution along this line on the basis and on the ground that this defendant was entrapped, she did not solicit, but rather a solicitation was made, in this instance, in order to subsequently prosecute her on this particular offense. For that reason we object to this testimony and any further testimony along that line, urging the plea of entrappment."

This objection was overruled by the Court, and to this ruling counsel for the defense excepted and reserved the bill of exception as to the testimony objected to and subsequent testimony relating thereto, the objection of defense counsel and the ruling of the Court to be made a part of the bill of exception (R 70).

The plea of entrapment was further urged in oral argument (R 227 et seq.).

In the motion for new trial petitioner asserted, *inter alia* (R 32):

"2.

"That the Court erred in not sustaining the plea of entrapment.

"3.

"That the Court erred in permitting introduction of evidence of rumors relative to the reputation of the accused because it put her character at issue before she had taken the witness stand. The character and reputation of an accused cannot be assailed by rumor or otherwise before it is put at issue by the accused.

"4.

"That the Court erred in sustaining the objection of the District Attorney when the witnesses for the State were asked to divulge the name of the witness who made the telephone call for the Sheriff's deputies. This was in violation of Article 1, Section 9 which provides that the accused shall have the right to be confronted with the witnesses against him.

• • •

"6.

"That the entrapment of the accused is in violation of her civil and constitutional rights, particularly in violation of Article 1, Section 2 of the Constitution of Louisiana and the 14th Amendment of the Constitution of the United States."

Also, in the assignment of errors (R 5) in petitioner's application to the Supreme Court of Louisiana for supervisory writs petitioner stated, *inter alia*:

"3) The trial court erred in permitting the introduction in evidence by the State the alleged bad character or reputation of the accused before she put her reputation at issue.

"4) The trial court erred in sustaining the objection of the District Attorney to the question propounded to the Deputy Sheriff seeking to obtain the name of the informer who informed, aided and assisted the deputy in 'making' the case against the accused.

"5) The Court erred in not finding entrapment of the accused."

In the petition filed in the Supreme Court of Louisiana for a stay of execution of the decree (R 242) it was alleged *inter alia*:

"2.

• • •

"c) The accused was convicted by the use of illegal evidence of her reputation when same was not at issue.

"d) The accused was denied equal protection of the laws and due process when the court refused to permit the deputy sheriffs, who testified, to reveal the name of an informer.

"e) That the accused was entrapped by the law enforcement officers thus depriving her of her liberty without due process of law."

REASONS FOR GRANTING THE WRIT

As pointed out by Mr. Justice Harlan in the majority opinion in *Lopez v. United States*, 373 U.S. 427, 83 Supreme Court 1381:

"The defense of entrapment, its meaning, purpose, and application, are problems that have sharply divided this Court on past occasions. See Sorrells v. United States, 287, U.S. 435, 53 S. Ct. 210, 77 L. Ed. 413; Sherman v.

United States, 356 U.S. 369, 78 S. Ct. 819, 2 L. Ed. 2d 848; Masciale v. United States, 356 U.S. 386, 78 S. Ct. 827, 2 L. Ed. 2d 859. Whether in the absence of a conclusive showing the defense is for the court or the jury, and whether the controlling standard looks only to the conduct of the Government, or also takes into account the predisposition of the defendant, are among the issues that have been mooted. . . ."

In the present case the issue is squarely presented as to whether the controlling standard should look only to the conduct of the law enforcement officers, or also take into account the predisposition of the defendant.

It is apparent from the record of this case that the law enforcement officials engaged in a course of conduct which was intended to promote the crime, and that the criminal conduct was the "product of the creative activity" of the law enforcement officials. It is also manifest that the defense of entrapment was not maintained by the trial court because of the state's characterization of the accused, based on rumors, as a common prostitute.

In *Sherman v. United States, supra*, Mr. Chief Justice Warren delivered the majority opinion. In that case the suggestion was made that the court should reassess the doctrine of entrapment according to principles announced in the separate opinion of Mr. Justice Roberts in *Sorrels v. United States*, 287 U.S. 435, 453, 53 Supreme Court 210, 217, 88 Lawyers Edition 413. The Court, however, pointed out that it did not ordinarily decide issues not presented by the parties, and found other good reasons not to dispose of the case on the ground suggested even though the court held that the undisputed testimony established entrapment as a defense, as a matter of law. As above shown, the issue is squarely presented here.

In a separate concurring opinion by Mr. Justice Frankfurter, concurred in by Mr. Justice Douglas, Mr. Justice Harlan, and Mr. Justice Brennan, it was pointed out that permissible police action should not vary according to the particular defendant concerned, and that if two suspects have been solicited at the same time and in the same manner, one should not go to jail simply because he has been convicted before and is said to have a criminal disposition. It was further pointed out that a contrary view would run afoul of the fundamental principles of equality under the law, and would espouse the notion that when dealing with criminal classes anything goes. Mr. Justice Frankfurter said:

> "The possibility that no matter what his past crimes and general disposition the defendant might have not have committed the particular crime unless confronted with inordinate inducements, must be ignored. Past crimes do not forever outlaw the criminal and open him to police practices, aimed at securing his repeated conviction, from which the ordinary citizen is protected. The whole ameliorative hopes of modern penology and administration strong counsel against such a view."

In the present case there was a prearranged plan and persistent efforts on the part of the law enforcement officers to arrange a meeting with the accused, involving numerous telephone calls, and promises of money.

It is to be further noted that the prosecution in the present case steadfastly refused to divulge the name of the individual who made the initial contact with the accused (R 52; R 79).

In *Roviaro v. United States*, 353, U.S. 60, 77 Supreme Court 623, this Court said:

> "Three recent cases in the Courts of Appeals have involved the identical problem raised here—the Govern-

ment's right to withhold the identity of an informer who helped to set up the commission of the crime and who was present at its occurrence. Portomene v. United States, 5 Cir., 221 F. 2d 582; United States v. Conforti, 7 Cir., 200 F. 2d 365; Sorrentino v. United States, 9 Cir., 163 F. 2d 627. In each case it was stated that the identity of such an informer must be disclosed whenever the informer's testimony may be relevant and helpful to the accused's defense.

> "We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors."

In the present case the testimony of this individual would have been highly relevant and possibly helpful to the accused's defense of entrapment. His testimony might have more clearly delineated the defense of entrapment by showing inducements which may have been made. The desirability of calling this party as a witness, or at least interviewing him in advance of trial, should have been a matter for the accused rather than the prosecution to decide.

As Mr. Justice Frankfurter said in *Sherman v. United States, supra,*

> "• • • • the Federal Courts have an obligation to set their face against enforcement of the law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods by effectuating them."

Whatever rumors may have been circulating concerning the defendant's reputation, this did not warrant the instigation by the law enforcement officers of a crime in order to punish her on account of her rumored reputation. If such procedures are condoned, then convictions in cases such as this will depend on the prior reputation of the accused, or some former act for which the accused is not being tried. It is submitted that this would be a denial of due process and of equal protection under the law.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a writ of certiorari should be granted.

Respectfully submitted,

SAM J. D'AMICO
Reymond Building
Baton Rouge, Louisiana

OSSIE B. BROWN
218 St. Louis Street
Baton Rouge, Louisiana

Attorneys for Petitioner

APPENDIX

Minutes of Court Dated December 3, 1963

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

No. 47,784

[SAME TITLE]

Honorable Jess Johnson, Judge presiding, was opened pursuant to adjournment.

Charge: Attempted prostitution; accused present in court represented by counsel. For oral reasons assigned the court found the accused guilty as charged. Counsel for the accused asked that sentence be deferred pending the filing of the transcript of the transcript and motions filed. The court released the accused on a new bond of $500.00 pending sentence.

Minutes of Court Dated May 19, 1964

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

[SAME TITLE]

Honorable Fred A. Blanche, Jr., Judge presiding, was opened pursuant to adjournment. Honorable Jess Johnson, then assumed the bench and the following matter was taken up:

The accused was present in court for sentence, having previously been tried and found guilty of attempted prostitution, sentence having been deferred.

At this time counsel for the accused filed a motion for a new trial. The motion was argued by counsel for the accused and counsel for the State and submitted. Whereupon, for oral reasons assigned the court overruled the motion for a new trial.

Counsel for the accused excepted to the ruling of the court and reserved a formal bill of exceptions and asked that the motion, together with all documents in the case, pleadings and all the evidence be attached thereto and made a part of the bill of exception.

The accused was then brought before the bar for sentence. Whereupon, the court sentenced the accused to be confined in the parish jail for three months and to pay a fine of $50.00

Minutes of Court Dated May 19, 1964

and costs, in default of payment of fine to be confined in the parish jail for an additional three months.

Counsel for the accused gave notice in open court to the court and to counsel for the State of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The court gave counsel for the accused ten days within which to make his application.

The execution of the sentence was stayed pending further orders of this court, the accused to be released on a new bond of $1,000.00.

Bill of Exception No. 1

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the 26th day of November, 1963 the accused filed a motion to quash the bill of information filed herein after having withdrawn a former plea of not guilty, said motion to quash is attached hereto and made a part hereof by reference thereto.

The motion to quash was argued and submitted to the Court on the 26th day of November, 1963 and overruled. Counsel reserved a formal bill of exception making the motion to quash a part thereof.

Said bill of exception has been tendered to the District Attorney and now same is tendered to the court and prays that same be signed by the Judge of this Court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk of Court

A True Copy Sept. 14, 1964

(Signed) JUANITA M. MCNEIL
Dy. Clerk of Court

Bill of Exception No. 2

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the trial of the above entitled and numbered cause that Pat Bonanno, a deputy sheriff, was called as a witness in chief, by the State, sworn and testified herein and on direct examinaion was asked by the District Attorney the following question:

"Q. When did you first hear that Gladys Jordan practiced prostitution?"

To which question counsel for defendant objected for the reason that this question dealt with the reputation and character of the accused, that it was irrelevant and immaterial and was hearsay evidence. The objection was overruled and counsel for defendant reserved a formal bill of exception and the witness was permitted to testify as follows:

"Q. When had you first heard that she was a prostitute?

"A. It would be hard to say, Mr. Pitcher, as far as the time element.

"Q. Well, how long ago, just recently or some years ago?

"A. Well, the only thing I might add here is that it had been rumored.

Bill of Exception No. 2

"Q. I understand that, but when did you first hear the rumors?

"A. The time element, let's say approximately a year ago.

"Q. A year ago. Was it this information that caused you to set up this raid, this particular raid?

"A. No, sir, additional information."

Said bill of exception has been tendered to the District Attorney and now same is tendered to the Court and prays that same be signed by the Judge of this Court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Per Curiam to Bill of Exception No. 2

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

The evidence was admitted not as an attack upon the character of the accused, but to establish a foundation or reason for believing that the law was being violated. This statement by the witness was not offered as evidence toward proving guilt, but to show absence of any arbitrary or capricious motive on the part of the officer and to rebut the charge of entrapment made by counsel for the defense by showing reasonable justification for subsequent action by the officer.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk

A True Copy Sept. 14, 1964

(Signed) JUANITA M. MCNEIL
Dy. Clerk

Bill of Exception No. 3

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the trial of the above entitled and numbered cause, Pat Bonanno, a deputy sheriff, was called as a witness by the State, sworn and testified in chief, herein and on cross examination by defense counsel, was asked the following question:

"Q. Who was that that made that call?"

This question was asked the deputy sheriff about the telephone call which had been made to the defendant by someone other than himself. The purpose of the question was to elicit from the witness the name of the informer. The District Attorney objected to the question on the grounds that this was an informer and the deputy did not have to reveal the name of an informer. The matter was argued and temporarily passed. After the noon recess it was argued further. The objection was sustained by the court. A bill of exception was reserved and the question, the objection of counsel and ruling of the court was made a part thereof, together with all of the testimony, which is made part hereof by reference thereto, particularly pages 125 through 127, 146 through 151 of the transcript.

Bill of Exception No. 3

Said bill of exception has been tendered to the District Attorney and now same is tendered to the Court and prays that same be signed by the Judge of this Court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk

A True Copy Sept. 14, 1964

(Signed) JUANITA M. MCNEIL
Dy. Clerk

Per Curiam to Bill of Exception No. 3

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Again, the name of someone who made a telephone call to pave the way for contact by the officer with the accused is immaterial, because the officer actually followed up and did visit the accused purportedly for the purpose of prostitution as explained by the witness. Evidence of a telephone call leading up to the officer's visit to defendant's home does not bear upon the guilt or innocence of defendant. The conversations of the witness personally with the accused took place after the telephone call and the conversations and what transpired between the witness and the accused were recited by the witness, all within his personal knowledge and participation, which testimony was not objected to.

JESS JOHNSON
Judge, 19th Judicial District Court

Bill of Exception No. 4

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the trial of the above entitled and numbered cause, that Fred Sliman, a Deputy Sheriff, was called as a witness in chief, by the State, sworn and testified herein and on direct examination was asked by the District Attorney the following question:

"Q. Mr. Sliman, have you heard of Gladys Jordan's reputation with regard to chastity before this particular night?

"A. Yes, sir, I have heard Gladys Jordan discussed for over ten years."

Counsel for defendant objected to such evidence on the ground that the reputation of the accused had not been put at issue by her therefore the State could not offer evidence of her reputation. The Court overruled the objection to which a formal bill of exception was taken and it was requested that the question and answer and all questions and answers pertaining thereto be made a part of the bill of exception.

Continuing the District Attorney said:

"Q. You were saying, Mr. Sliman?

Bill of Exception No. 4

"A. I have heard Gladys Jordan discussed on many occasions in the last several years to the effect that she was a prostitute.

"Q. And it was based on this information that you all set this raid up, is that right?

"A. Yes, sir."

Said bill of exception has been tendered to the District Attorney and now same is tendered to the Court and prays that same be signed by the Judge of this Court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk

A True Copy Sept. 14, 1964

(Signed) JUANITA M. MCNEIL
Dy. Clerk

Per Curiam to Bill of Exception No. 4

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

A reputation for lack of chastity in a prosecution charging prostitution is admissible, but the question here does not go that far, It merely asks if the witness had heard her reputation discussed. The witness was not asked to say what such discussion disclosed. When, without any reservation counsel for the accused at pp. 226 and 227 of the transcript proceeded to question the witness about rumors, which is a complete waiver of the objection, as the witness never made any attempt to recite the nature of the rumors. There was no prejudice.

JESS JOHNSON
Judge, 19th Judicial District Court

Bill of Exception No. 5

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the trial of the above entitled and numbered cause, that Ron Crouch, was called as a witness in chief, by the State, sworn and testified herein and on direct examination was asked by the District Attorney the following question:

> "Q. During that time has it come to your knowledge that Gladys Jordan has the reputation of being a prostitute in the City of Baton Rouge?"

An objection was made for the same reasons made to the other similar questions, that is, that defendant's character and reputation was not at issue and could not be put at issue, unless she put it at issue, which she had not done.

The objection was overruled by the Court. The Court stating that the purpose of the testimony was to explain the actions of the witness and that it would not be considered an attack upon the character of the defendant. A formal bill of exception was reserved making the question and answers, objections and ruling of the court part thereof.

Mr. Pitcher continued and asked the following question:

Bill of Exception No. 5

"Q. Have you heard rumors that she was a prostitute?"

To which the witness answered:

"A. Yes, I had."

A reservation was made by counsel for defendant that he did not wish to lose his objection because the question was repeated, to which the District Attorney agreed and the record reflected such.

Said bill of exception has been tendered to the District Attorney and now same is tendered to the Court and prays that same be signed by the Judge of this court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Per Curiam to Bill of Exception No. 5

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Again, this evidence is admissible as an explanation of what the witness did and why and the Court said very positively at p. 244 that the explanation was not admitted and would not be considered as an attack upon the character of defendant.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk

A True Copy Sept. 14, 1964

(Signed) JUANITA M. MCNEIL
Dy. Clerk

Bill of Exception No. 6

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

Be it remembered that on the 19th day of May, 1964, the accused, after verdict and before sentence, filed a motion for a new trial herein which was denied by the Court, to which ruling counsel reserved a bill of exception. The motion for a new trial which is part of the record herein, is made part hereof by reference thereto. The transcript of testimony taken on the trial hereof which was attached to the motion for a new trial, is attached hereto and made part hereof.

Said bill of exception has been tendered to the District Attorney and now same is being tendered to the Court and prays that same be signed by Judge of this Court according to law.

Baton Rouge, Louisiana, this 4th day of June, 1964.

JESS JOHNSON
Judge, 19th Judicial District Court

Filed May 28, 1964

(Signed) KATHERINE BRES
Dy. Clerk

A True Copy Sept. 14, 1964

(Signed) JUANITA M. McNEIL
Dy. Clerk

Order Denying Petition for Writ of Certiorari

SUPREME COURT OF LOUISIANA

NEW ORLEANS

No. 47,339

[SAME TITLE]

June 30, 1964

In re: Gladys Jordan applying for writs of certiorari, mandamus, prohibition and a stay order

The application is denied. There appears no error in the rulings complained of.

/s/ JBF

/s/ JBH

/s/ FWH

/s/ EHMcC

/s/ WBH

/s/ JWS

/s/ FWS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing petition has been served on (1) Honorable Sargent Pitcher, Jr., District Attorney, Parish of East Baton Rouge, Louisiana, (2) The Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana, and (3) The Supreme Court of the State of Louisiana, by depositing the same in the United States Mail, with first class postage, prepaid, properly addressed to the respective addresses.

Baton Rouge, Louisiana, _____, 1964.

_____

Sam J. D'Amico

_____

Ossie B. Brown

Attorneys for Gladys Jordan

Office Supreme Court, U.S.
FILED
OCT 8 1964
JOHN F. DAVIS, CLERK

No. 524

In the Supreme Court of the United States

OCTOBER TERM, 1964

GLADYS JORDAN, Petitioner,

v.

STATE OF LOUISIANA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA IN THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, LOUISIANA

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

SARGENT PITCHER, JR.,
District Attorney,
19th Judicial District,
Baton Rouge, Louisiana.

RALPH L. ROY,
Assistant District Attorney,
19th Judicial District,
Baton Rouge, Louisiana.

Attorneys for Respondent.

No._____

In the
Supreme Court of the United States

OCTOBER TERM, 1964

GLADYS JORDAN, Petitioner,

v.

STATE OF LOUISIANA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA IN THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, LOUISIANA

"One who is instigated, included or lured by an officer of the law or other person, for the purpose of prosecution, into the commission of a crime which he had otherwise no intention of committing, may avail himself of the defense of "entrapment". Such defense is not available, however, where the officer or other person acted in good faith for the purpose of discovering or detecting a crime and merely furnished the opportunity for the commission thereof by one who had the requisite criminal intent." *Lashley v. State*, 67 So.2d 648, 649; In re *Davidson*, 185 Pacific 2d 354, 357; 64 Nev. 514. The rule in deception, trickery or artifice does not constitute entrapment where it merely furnished an accused an opportunity to commit a criminal act previously planned by him is particularly true where the crime is one that is usually committed

in secret and is of such a depraved character that the public must be protected. Especially is it true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes the evidence of a course of conduct. In fact, it has been held that in such cases the entrapper may even provoke or induce the commission of a particular violation of the law, if he knows or has reasonable grounds to believe that the accused is a repeated or habitual offender. To render applicable the rule that deception, trickery or artifice does not constitute entrapment where it merely furnishes an accused an opportunity to commit a criminal act previously planned by him, it must appear that there were reasonable grounds for believing that the accused is engaged in or intends to engage in the unlawful activity, as where the accused is a known law violator; but such methods are not justified nor is a conviction sanctioned where there is no ground for suspicion. However, reasonable suspicion, and not probable cause, that one is engaging in particular criminal behavior is all that is necessary before the police authority may invite to engage in particular criminal behavior. Accordingly, the fact that accused had no previous criminal record or reputation, and that, although he had many opportunities he had never before attempted to do the alleged criminal act, is a consideration tending to support the defense of entrapment. 22 CJS 45 (2) Page 145.

Thus, where an officer called a person suspected of practicing medicine without a license and com-

plained of a chest pain and requested treatment, and such person called on the officer and treated him, there was not entrapment. *T. C. Aitchison v. U.S. Municipal, Appellant*, 98 Atlantic 2d 791. Also where a police woman who was treated and prescribed for by the accused, had planned with officer of the State Medical Association to call on the accused for purpose of securing evidence against him and had, by representing herself to be ailing, although she was well, secured evidence on which he was convicted of practicing medicine without a certificate, and accused did not testify that he did not have any purpose of intent to commit the offense alleged, and it clearly appeared that he did the acts which constituted such practice, entrapment had not occurred. *State v. Gutilla*, 116 NE 2d 208, 94 High Appeals 469. It has also been held that where an attorney employed by a dental association secured a witness merely to afford the accused an opportunity to violate the statute requiring a license for the practice of dentistry, and such witness did not have to use persuasion or inducements to get accused to examine his mouth and make an impression of his teeth, and prepare witness for a partial plate, witness, under such circumstances, merely afforded the accused an opportunity to violate the law, and such conduct on part of the witness did not constitute entrapment. *Crosbie v. State, CR.*, 330 Pacific 2d 602.

It has also been held that when a police officer expressed an interest in a particular girl whereupon the accused procured her at the police officer's request was not fatal to conviction for procuring as

entrapment. *Bolick v. State*, 309 SW 2d 74, 165 Texas Criminal 493. It has also been held that an officer who made a false representation to female operator of a date and escort bureau as to officer's residence in the city in an effort to ascertain whether prostitution was being practiced, and indicated he would like to meet a girl, did not establish the defense of entrapment. *State v. Poague*, 72 NW 2d 620, 245 Minn. 438. Where a police officer in disguise went to a bar room and inquired of the manager "Where are all the women" and "What is the price" whereupon the manager designated a certain woman employee in the place "could be had" and whereupon the manager gave the woman employee permission to leave the place for forty-five minutes with the officer in disguise, it was held that this was not entrapment to a charge of operating a house of ill fame against the manager. *Lashley v. State*, 67 So.2d 648. The court said that in "such defense is not available, however, where the officer or other person acted in good faith for the purpose of discovering or detecting a crime and *merely furnished* the opportunity for the commission thereof by one who had the *requisite criminal intent*." For example it has been held that more than an offer to buy narcotics is necessary to constitute entrapment of the seller. *Vanvas v. U.S.*, CCA Fla 13 Fed.2d 347; *Kline v. U.S.*, CCA Arizona, 9 Fed.2d 621. *Smith v. State*, 13NE2d 562, 214 Indiana 169. Rehearing denied 14 NE.2d 1017, 214 Indiana 169; *U.S. v. Linderfield CCANY*, 142 Fed.2d 829, Certiorari denied, 65 Sup.Ct. 89, 323 U.S. 761, 89 L.Ed. 609.

U.S. v. Abeallah CCANY, 149 Fed.2d 219, Certiorari denied, 66 Sup.Ct. 29, 326 U.S. 724, 90 L.Ed. 429.

General rules of entrapment apply to prosecutions for the unlawful importations, sale or possession of narcotics; and the use of deception in detecting an unlawful sale or possession of narcotics does not constitute entrapment when there is reasonable cause to believe that the law is being violated. 22 CJS, Section 45 (4) If an officer uses no more persuasion than is necessary to an ordinary sale of a narcotic and the accused readily is willing to make the sale to the officer, there is no entrapment. *People v. Ramos*, 303 Pacific 2d 783, 146 CA2d 110. Once the defense of entrapment has been raised, it is proper to inquire into the reputation of the accused to determine his pre-disposition to commit the offense or inquire into the reasonableness of the officer's conduct. *Washington v. U.S.*, Ct. Appeals Texas, 275 Fed.2d 687. In speaking of the law regarding entrapment as set forth in 22 CJS, Verbal Criminal Law Section 45, Page 99, the Louisiana Supreme Court said, "The rationale of this legal concept is that officers of the law shall not incite crime merely to punish the criminal. In keeping with this philosophy, which sustains it, the defense of entrapment has a limited application. It is restricted to those instances in which a defendant is induced or incited to commit a crime not originally intended or contemplated by him, for the purpose of arresting and prosecuting him. The fact that an opportunity is furnished or that the defendant is aided in the commission of a crime which originated in his

own mind constitutes no defense. That is a clear distinction between inducing a person to commit a crime and setting a trap to catch him in the execution of criminal designs of his own conception. In the judicial formulation of this doctrine, the primary emphasis is on the defendant's predisposition to commit the crime. These limitations, implicit in the doctrine itself, have been universally recognized." *State of Louisiana v. Jim Turner and Seymour Wheeler*, 127 So.2d 514, 241 La. 95.

With reference to the above authorities and particularly with reference to entrapment as it relates to the sale of narcotics, alcoholic beverages, there is no reason why the law as announced in those particular cases should not apply to a case of prostitution. It will also be noted by virtue of the above authorities that the defendant's predisposition to commit a crime is of paramount importance in order to distinguish whether there is an inducement to commit the crime or whether or not it amounts to a mere opportunity being furnished the accused to commit the crime. Thus evidence with reference to the knowledge by the officers of the reputation of this accused is relevant in a case where entrapment is urged as a defense. The purpose of this evidence being to show the predisposition of the accused and to show the reasonableness of the officers' actions in the alleged entrapment. *State of Louisiana v. Turner and Wheeler*, 241 La. 94, 127 So.2d 512. 22 CJS Section 45 (2), Page 145. The trial court stated in its pro curiam opinions dealing with the objections of evidence with reference to the

reputation or character of the accused as a prostitute, that this evidence was not accepted or considered by the court as an attack upon her character but was admitted specifically on the question of entrapment; was extremely relevant with reference to whether this was an inducement by the officers to the accused to commit a crime or whether or not it was a mere offer of an opportunity by the officers to one who was already predisposed to the commission of the crime.

Public policy favors the protection of the identity of informers, and, generally in the absence of statute discloser will not be compelled. Such policy, however, forbids only non-essential disclosure and disclosure may always be compelled in cases where identity of informer appears essential to the defense. No fixed rule with respect to disclosure of an informer in criminal prosecutions is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders non-disclosure erroneous must depend on the particular circumstances of each case taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors. Where the informer had not merely given information to the arresting officers but was a participant with the accused in the illegal transaction charged, his identity is material to the defense and should be disclosed on request. 23 CJS Section 954B, Pages 786, 787. As the transcript will reveal and as stated at Page 6 of petitioner's brief

for petition of writs of certiorari herein, the informant in this case merely informed the police officer that this accused was a prostitute. Upon this information the police officer called her and arranged for a date. The arrangement, as stated, was that the police officer was to call her from a place in the general area of her home which he did, whereupon she, the accused, informed the deputy to wait in the general area from which he called her and as she would come by in her car, which she described, and lead him to her home, which she did. When the deputy first spoke to the accused in this case about this arranged date, she invited him over saying, "You'al come over, we will make a party of this, bring the steaks and a bottle of Cutty Sark." See transcript, page 128. The officer said I asked her, "How much will it cost?" She said, "What I told the person before. I said 'Is that $20.00?' She said, 'That is correct.' " See Transcript Page 129. Thus the evidence in this case reveals that the only thing that the informer did in this case was to, in effect, introduce this officer to the accused. The opportunity was merely furnished her to commit this crime. There was no persuasion on the part of anyone to induce her to commit a crime which she had no intention of committing. Other than this introduction, the informer had nothing to do whatsoever with this case. He did not participate in any manner during the commission of this crime by the accused. Thus the cases heretofore cited which hold that the mere offer to one, who by accepting, commits a crime because he was predisposed or had the intent to do

so is not entrapped, are applicable to this case at bar. Since the record clearly reveals that the informant did not participate in any manner in this offense other than to introduce the officers to this accused over the telephone, disclosure of his identity could not conceivably be essential to defense of this accused.

The Federal authorities cited by petitioner in support of their alleged contentions herein are all consistent with the views expressed by the authorities cited in respondent's brief herein. In *Rovilo v. U.S.* cited by petitioner, the informant therein was the sole participant in the offense charged and under which the conviction was had. Thus this Honorable Court held disclosure was essential because of that reason. In the case at bar the informer was a non-participant in the offense charged. In *Sherman v. U.S.* cited by petitioner in her brief on the question of entrapment, the defendant in the Sherman case was found to have been entrapped into the offense charged by the use of sympathy and repeated efforts of persuasion. There is no such showing in the case at bar. The defendant did not testify that she was induced into committing an offense of which she had no intention of committing. Entrapment is a positive defense, the invocation of which necessarily assumes that the act charged was committed. *Henderson v. U.S.*, CA Fla. 237 Fed. 2d 169, 172, 61ALR2d 666. Accordingly, while inconsistent defenses may generally be in opposed in a criminal case, it has been held that, although the defense of entrapment may be raised even the accused denies the commission of the act charged, where there

has been such a denial the defense of entrapment cannot be successfully availed of, since one basis of the defense is absent. *Rogdriguez v. U.S.*, CA Texas, 227 Fed.2d 912. Thus in the case at bar by pleading not guilty and in effect denying the commission of this alleged offense, the accused necessarily waived her right to claim entrapment therein since entrapment necessarily admits the offense charged. 22 CJS 45 (1) Pages 137, 138.

CONCLUSION

In view of Rule 19 of this Honorable Court's rules which provides:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

this petition for certiorari should be denied.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

SARGENT PITCHER, JR.,
District Attorney,
19th Judicial District,
Baton Rouge, Louisiana.

RALPH L. ROY,
Assistant District Attorney,
19th Judicial District,
Baton Rouge, Louisiana.

Attorneys for Respondent.